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C O N F I D E N T I A L SECTION 01 OF 02 KATHMANDU 001606

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SUBJECT: NEPAL: COURT CASE MIGHT HALT TRANSIT OF TIBETANS

Classified By: Ambassador James F. Moriarty; Reasons 1.4 (b/d).

1. (SBU) SUMMARY: Because of a case filed in the Kathmandu District Court accusing a police constable who escorted two Tibetan refugees to Kathmandu of trafficking and taking bribes, rumors abound that Nepal's Immigration Department has halted any further transit of Tibetan refugees to India for now. While the Tibetan Refugee Resettlement Center in Kathmandu should be able to handle the backup for some time should the rumors prove true, a long delay in transit could present real problems. Moreover, should the court decision determine that the constable, who escorted two refugees to Kathmandu four years ago, was acting without any underlying legal authority, the case could call into question Nepal's unwritten procedures for handling refugees. END SUMMARY.

2. (C) On August 10, UNHCR informed PolOff that there was a court case in "one of the district courts" that appeared to have the potential to cause "some difficulties" for the transit of Tibetan refugees through Nepal. On August 12, a UNHCR staff member visited the Kathmandu District Court and was allowed to see the case file in question. According to the UNHCR staffer, four years ago two Tibetans asylum seekers were arrested by Nepali police near the Tibet border. A police constable (Raju Shrestha) escorted the Tibetans to the Department of Immigration in Kathmandu, who in turn handed them over to UNHCR at the Tibetan Refugee Resettlement Center (TRRC), in concert with the "Gentleman's Agreement and standard practice at the time. (NOTE: The two refugees in question have long since transited to India. END NOTE.)

3. (C) A second police constable who was stationed at the same border post subsequently filed a complaint with the Kathmandu District Court against Shrestha, charging that he was involved in trafficking and taking of bribes. The court has ordered the Nepali Department of Immigration and the National Unit for Coordination of Refugee Affairs (NUCRA) -- both located under the Home Ministry -- to inform the court of any international agreements or national laws that determine Nepal's handling of asylum seekers. (NOTE: Nepal, like other countries in South Asia, is not a signatory to the United Nations Convention on Refugees. The "Gentleman's Agreement" on the handling of Tibetan refugees, established in 1990 between the GON and UNHCR, has never been formalized, although it was put into writing last year in a letter from Nepal's Foreign Secretary to Senator Feinstein. END NOTE.)

4. (C) UNHCR became aware of the case when enquiring why the Department of Immigration had been unwilling to provide an immigration officer to accompany a busload of Tibetan refugees for the trip to the Indian border since earlier this month. According to UNHCR, the Director General of Immigration had decided to "wait a few days" until the court case was resolved before allowing any further transits to India. At present there are about 200 refugees who have entry permits from the Government of India and are prepared to make the trip.

5. (C) PolOff spoke with Ministry of Home Joint Secretary and Director of NUCRA Narayan Gopal Malego on August 12. Malego stated that the DG of Immigration was attempting to put together a response to the court, and would consult the Ministry of Home if he needed assistance. Malego was unwilling to comment on the DG's decision to halt the transit of additional refugees, except to say that until the court decision was made, the legal basis for handling of refugees was in question. "We may have to formalize the process," he noted.

6. (C) An extremely agitated Director General of Immigration, Subarna Lal Shrestha, told PolOff on August 13 that he had not made any decision to halt the transit to India, nor did he know of any such decision. However, when repeatedly asked if that meant that Tibetans would still be allowed to transit from the TRRC to India with an immigration escort, Shrestha dodged, instead trying to ascertain where PolOff had heard that Shrestha had decided to halt the transit.

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COMMENT

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17. (C) It is not uncommon that one GON hand does not know what the other is doing. The next departure of a bus for the Indian border will be the only reliable sign that the system is back on track and functioning. Meanwhile, the TRRC can handle the backlog for a short time, should the DG in fact not allow ongoing transit. However, court cases in Nepal in some circumstances go on for decades.

18. (C) The court case itself presents a possible challenge to the continued flow of Tibetan refugees, although it could also result in a positive outcome. Should the court determine that Constable Shrestha's escort of the refugees constitutes "smuggling" or "trafficking" because of the lack of underlying laws for the special handling of refugees, the decision could set a precedent calling into question Nepal's handling of any and all refugees (Tibetans, Bhutanese, etc.). Should such an eventuality occur, the GON would have no ability to treat refugees any different from illegal immigrants. That could, however, as Malego indicated, force a more formalized set of rules to replace the "Gentleman's Agreement" for treatment of Tibetan refugees, something that Tibetan special interest groups, UNHCR and many governments have long sought. We will stay in touch on this issue with UNHCR, the Tibetan community, and other concerned Embassies to weigh in as necessary with the GON.

MORIARTY